

BOARD OF ENVIRONMENTAL REVIEW AGENDA ITEM

EXECUTIVE SUMMARY FOR ACTION ON RULE INITIATION

Agenda # III.A.7

Agenda Item Summary: The Department requests that the Board initiate rulemaking to amend the air quality rules to adopt and incorporate by reference recent revisions to federal regulations concerning national emission standards for hazardous air pollutants (NESHAPs) and the development of maximum achievable control technology (MACT) emission limits.

List of Affected Rules: This rulemaking would amend ARM 17.8.302(1)(f).

Affected Parties Summary: The proposed rule amendment would affect all owners or operators of air pollutant sources that emit hazardous air pollutants (HAPs) for which MACT standards are required.

Scope of Proposed Proceeding: The Department requests that the Board initiate rulemaking, conduct a public hearing to consider the proposed amendment to ARM 17.8.302(1)(f), and take testimony on inclusion of the rule amendment into the State Implementation Plan (SIP).

Background: This action is in response to the U.S. Environmental Protection Agency's (EPA's) direct final action noticed in the Federal Register, 67 FR 16581, amending 40 CFR Part 63 in accordance with Sections 112(g) and 112(j) of the Federal Clean Air Act (FCAA). It is necessary for the state to adopt the revisions to the federal regulations to maintain the state's delegation of authority from EPA and the state's primacy to enforce the air toxics program.

The proposed rule amendment would adopt and incorporate by reference revisions to the NESHAP General Provisions. The General Provisions in 40 CFR Part 63 establish the framework for emission standards and other requirements developed pursuant to Section 112 of the FCAA, which requires EPA to promulgate regulations establishing emission standards for categories of sources of HAPs. The General Provisions eliminate the need to repeat general information and requirements in individual NESHAPs, by consolidating all generally applicable information in one location. The amendments to the federal regulations that would be adopted and incorporated by reference clarify the General Provisions and make them more flexible.

The proposed rule amendment also would adopt and incorporate by reference revisions to the provisions of 40 CFR Part 63 that implement Section 112(j) of the FCAA. Under Section 112 of the FCAA, EPA was required to promulgate MACT standards for all source categories within 10 years after the date of enactment of the Clean Air Act Amendments of 1990. Under Section 112(j), if EPA missed the deadline by 18 months (May 15, 2002), owners or operators of major sources in categories for which EPA had not promulgated a standard were required to submit applications to the permitting authority (the Department) to revise their facility's operating permit to contain emission limits equivalent to the limits that would apply if EPA had promulgated the standard.

The revisions to 40 CFR Part 63, concerning Section 112(j) of the FCAA, modify regulations regarding the timing of permit applications and the timing and procedures for application of MACT standards. Under the revisions, MACT standards for new sources will apply when a facility's operating permit is issued, rather than 18 months after the FCAA's deadline for development of the standards. The revisions create a two-part permit application process. Part 1 requires basic information, such as source type and location, by May 15, 2002, from all major sources in source categories for which EPA has failed to issue MACT standards. Part 2 will require relevant process, pollutant, and control information, to allow permitting authorities to develop MACT standards for each affected facility equivalent to the standards that EPA would have developed. Part 2 application information is due to the permitting authority within 24 months after submission of the Part 1 application. However, EPA has indicated that it expects to promulgate all remaining MACT standards before any facility is required to submit Part 2 of its application to revise its operating permit.

Hearing Information: The Department recommends that the Board appoint a hearing officer, initiate rulemaking, and conduct a public hearing to take comment on the proposed amendment and inclusion of the proposed amendment in the SIP. EPA regulations require a public hearing to take comment on adoption of revisions to the SIP. This amendment would be submitted to EPA as a SIP revision.

Board Options: The Board may:

1. Initiate rulemaking and issue the attached Notice of Public Hearing on Proposed Amendment;
2. Modify the Notice and initiate rulemaking; or
3. Determine that amendment of the rules is not appropriate and deny the Department's request to initiate rulemaking.

DEQ Recommendation: The Department recommends that the Board appoint a hearing officer, initiate rulemaking, and conduct a hearing, as described in the attached draft Montana Administrative Register notice.

Enclosure: The following information is attached to this summary:
Draft Notice of Public Hearing on Proposed Amendment.